



Economic Impact Analysis Virginia Department of Planning and Budget

16 VAC 30-50 – Rules of the Virginia Workers’ Compensation Commission Virginia Workers’ Compensation Commission December 11, 2002

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB’s best estimate of these economic impacts.

Summary of the Proposed Regulation

The Workers’ Compensation Commission (commission) is amending its regulations to implement Chapter 538 of the 2002 Acts of Assembly, which requires that the commission promulgate rules to establish an expedited calendar for the administration of hearings where delay in adjudication may result in severe economic hardship. This proposed rule establishes an expedited hearing procedure and specifies the criteria for granting an expedited hearing.

Estimated Economic Impact

The primary benefit of this proposal arises from the availability of an expedited hearing for a subset of cases adjudicated by the commission. At the outset, it is worth noting that, in a survey of other states, commission staff found that Virginia has adjudication delays shorter than more those in more than half of the other states. In fact, Virginia may be in the top third of states in the speed with which these cases are adjudicated.

Since the expedited hearing process primarily involves rearranging the order of hearings, benefits can only be expected to arise if the cost of delay in the adjudication of cases is very different across cases. If delay in a given case has the same cost to the individual involved as a delay in any other case, then rearranging cases will, at the very best, produce zero change in costs. Once the costs of implementing an expedited hearing process are taken into account, rearranging hearings with equivalent costs of delay will result in a net social cost.

To assess the potential for gains from rearranging cases, we first need to account for how delay may impose different costs on workers involved in different cases. The key differences between the cases for the purposes here would be the magnitude of medical expenses and the magnitude of income loss. It may be inferred that the greater the percentage loss of income and the greater the medical expenses relative to family wealth, the greater the loss. However, if costs increase in direct proportion to the percentage loss there still may not be a gain to rearranging cases. This is because many cases may need to be delayed in order to expedite a given case. In fact, it is not hard to imagine circumstances where a string of hardship cases could stop many other founded cases dead in their tracks and result in much longer delays. Unless damages rise more than in proportion to lost income and to medical expenses, there may be little or no gain from expedited hearings, and, indeed, rearranging cases could actually result in increased costs both to the affected workers and the taxpayers.

There is good reason to believe that, at least in the most severe cases, costs of delay could increase more than in proportion to the loss. The reason for this is that, for some individuals, borrowing money may not be possible, and, consequently, a large loss of income and increase in medical expenses may force the family to make a number of irreversible choices such as selling assets, moving, and forgoing essential family medical services. Unfortunately, measuring the economic value of these delay costs is quite difficult since every family will face different irreversibilities, different alternatives, and different personal valuations for the costs.

On the assumption that there are cases with large delay costs, then there may be a gain to moving such a case ahead of a case with low delay costs, so long as the additional delay in the non-hardship cases is not too great. Whether these potential gains will, in fact, be realized depends on a number of factors. The realization of gains depends on a correct identification of the cases with very high costs. Mistakes may be of two kinds. First, there is the chance that

some high cost cases will not be identified even though the process is in place to do so. Second, some low cost cases will be mis-identified as high cost cases. Both types of mistakes decrease the benefit of the expedited process. No information is available to assess the likelihood of mistakes.

There is also the probability that the worker in a genuine high cost case will not apply for expedited hearings. This could occur due to unfamiliarity with the expedited hearing process, to the increased complexity of filing for expedited hearings, or for other reasons. Again, this would reduce the benefit from the new process. According to commission staff, this possibility is not likely to be a problem, at least in the short run. Lawyers appearing before the commission have indicated that they will apply for expedited hearings as a matter of course until it becomes clear what standards the commission is actually using to determine hardship. Even in the long run, if the cost of filing for an expedited hearing is low, then we would expect to see more hardship petitions filed than are later found to be justified. Since there will be some significant probability that non-hardship cases will be found to be hardship cases (and such mistakes are simply unavoidable), then there is ex ante a net gain to the marginally non-hardship cases from applying for hardship status.

In addition, the granting of special status to a class of cases will give incentive for workers to arrange their affairs in a way that maximizes their probability of qualifying as a member of that special class. The term “moral hazard” is often used for the tendency of individuals to arrange their own affairs to maximize their net benefit from programs. At the margin, the possibility of getting special treatment as a hardship case will induce some individuals to take less care to avoid actually being a hardship case. This is simply an expected behavioral response to incentives. It is widely observed in many types of economic transactions. Any increased costs due to moral hazard must be added to the other costs of the new program.

The commission has estimated that the cost of administering the expedited hearing process will fall somewhere between \$200,000 and \$525,000 per year, depending on the volume of applications for hardship status. The commission expects between 2,000 and 2,500 requests for expedited hearing each year. Some smaller number of cases will be granted expedited status, and in only a subset of these expedited cases will the worker filing the claim actually prevail. Thus, we may expect that the tax dollars spent for each successful expedited case will exceed

\$500. Adding to this the additional waiting costs imposed on all of the non-hardship cases raises the costs even further.

It may be possible to generate all of the benefits of expedited hearings without many of the associated costs. For the amount of money that the commission will be spending on actual administrative costs, a program of interest rate subsidies on short-term loans from private lenders could alleviate nearly all of the costs of delay for those waiting to have their cases adjudicated. For those meeting a bright-line, but somewhat relaxed, hardship standard based on medical expenditures, fixed expenditures, and wealth, low interest loans could be made available from private lenders. Rather than spending the \$200,000 to \$525,000 on administrative costs, the funds could be spent in a way that directly benefits those waiting to have their cases adjudicated. This eliminates the additional cost imposed on the non-hardship cases from having their cases pushed back to make way for the expedited cases. Overall, an interest rate subsidy program would probably provide much greater net benefits than would an expedited hearing process.

Businesses and Entities Affected

The proposed amendments affect the people who bring the approximately 12,000 claims per year for compensation for accidental work injuries in Virginia. An estimated 2,000 to 2,500 cases for expedited hearings would be brought each year. Those who are granted an expedited hearing will gain and those who must wait longer due to having an expedited hearing move ahead of theirs will lose.

Localities Particularly Affected

The proposed regulations affect all Virginia localities.

Projected Impact on Employment

It is not expected that these provisions will have any measurable impact on employment. Any increased employment due to the additional administrative expenditures by the commission will be fully matched by employment lost elsewhere in the economy due to the greater taxation required to support the higher administrative expenditures.

Effects on the Use and Value of Private Property

These rules will not have any direct effect on the use or value of private property in Virginia.

